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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

JEREMIAH F. MANNING,

Appellant,

v.

LUCY J. KIM,

Respondent.

A149875

(San Mateo County  
Super. Ct. No. FAM0123613)

Jeremiah F. Manning appeals from the trial court’s final judgment in his dissolution action against Lucy J. Kim awarding Kim sole physical custody of their three minor children and awarding Manning spousal support. He raises several issues that were forfeited by failing to appeal from appealable orders or by failing to raise them below. Manning also claims that the custody evaluator in the case was biased against him. We reject each of Manning’s arguments and therefore affirm.

I.

FACTUAL AND PROCEDURAL  
BACKGROUND

Our ability to understand fully the factual and procedural history of this case is hampered because Manning failed to include several key documents— such as the petition for dissolution and some relevant trial court rulings— in his appellant’s appendix, and Kim failed to submit either a respondent’s appendix or a brief. We therefore summarize the factual and procedural history as best we can based on the record before us.

Manning is an attorney licensed to practice in New York, and Kim is a doctor. They were married for around 12 years and have three children. They separated on November 26, 2013.

These proceedings were initiated in December 2013, and soon thereafter Manning requested Kim's financial support to help him pay his legal fees. A March 2014 trial court order memorializes an agreement that Kim would take out a personal loan of \$50,000 guaranteed by a community asset (a retirement fund), that Manning would make monthly repayments to Kim for his half of the loan, and that \$25,000 would be paid to an attorney on Manning's behalf as soon as the loan closed. Also in March, the court appointed a child-custody evaluator.

An attorney apparently briefly represented Manning but then filed a motion to withdraw in June 2014.<sup>1</sup> Manning complained about insufficient funds to pay for his legal fees as early as September 2014. At that time, he was proceeding without legal representation. He stated in a settlement conference statement that he "desperately require[d] counsel" because of "the litigious behavior of [Kim] and her attorneys."

The child-custody evaluator submitted a confidential report dated September 16, 2014, recommending that the parents share legal custody of the children, that Kim have sole physical custody of the children, and that the then-current visitation plan for Manning to see the children continue.

Also in September 2014, the trial court ordered Kim to pay Manning \$4,633 per month for spousal support and \$634 per month for child support. Manning did not appeal from the order.

Manning repeatedly, and unsuccessfully, sought attorney fees. He requested \$25,000 in attorney fees by motion filed in October 2014. Kim opposed the request, arguing that Manning had made an insufficient showing of need for the fees under Family

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<sup>1</sup> Kim represented at oral argument that Manning also was briefly represented by two other attorneys in the trial court; however, the sparse appellate record does not shed light on that assertion.

Code, section 2030.<sup>2</sup> The trial court denied the request by order filed in February 2015. Manning did not appeal from the order. He likewise did not appeal from an order in July 2015 that again denied his attorney fees. Manning filed another motion requesting attorney fees at the end of July. It is unclear from the record how the court ruled on the motion, but Manning did not retain counsel.

During this same time, Manning filed a request for an order to remove the custody evaluator and to exclude her report. The trial court denied the request.

Trial regarding custody issues began in September 2015. On the second day of trial, Manning again requested attorney fees. The trial court denied the request, stating, “So I will note for the record this is day two of trial that there has been no evidence or information presented to the Court by way of financial documents with regard to this motion for attorney[] fees. There have been multiple motions made in the past. We are not going to continue the trial. I’m not going to allow [Manning’s] motion, so the motion is denied.” Manning did not appeal.

At the start of proceedings on October 28, 2015, the trial court (Judge Susan Greenberg) made a statement about an attorney who was apparently affiliated with a law firm representing Kim. Judge Greenberg stated: “Good morning. So through this trial [attorney] Mr. [Joseph] Crawford has not been present and it was— I didn’t know and I didn’t expect him to be here yesterday. So I need to state for the record although he didn’t participate other than to provide a couple of documents, I need to state for the record that about 18 months ago during my campaign he made a thousand dollar donation to my campaign but he has not been participating and none of the other attorneys made donations so there was nothing to disclose. I thought that I would just throw it out there because he’s here again.” Manning did not object, and Kim’s counsel continued with her closing argument. The issue of child custody was submitted to the court in late October.

Around five months later, in March 2016, Manning discovered on the California Secretary of State’s website that two of the law firms representing Kim had given Judge

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<sup>2</sup> All statutory references are to the Family Code unless otherwise specified.

Greenberg campaign contributions in 2014. One contribution was in the amount of \$2,000, and the other was in the amount of \$500. Manning requested ex parte that Judge Greenberg recuse herself, but the motion was denied on March 18. Manning thereafter submitted a written request to disqualify Judge Greenberg under Code of Civil Procedure section 170.3, subdivision (c). He alleged that Judge Greenberg had failed to disclose campaign contributions as required under Code of Civil Procedure section 170.1. He asked the court to vacate all of its orders since September 5, 2014, order a new trial on custody and support issues, and then recuse itself.

The trial court on April 5, 2016, struck Manning's statement of disqualification. The court concluded that (1) the statement was untimely, (2) disqualification was not mandatory because no individual lawyer (as opposed to law firm) in the proceeding contributed more than \$1,500 (Code Civ. Proc., § 170.1, subd. (a)(9)(A)), and (3) Manning did not set forth further specific facts that would constitute a basis for disqualification under Code of Civil Procedure section 170.3, subdivision (c)(1). Manning did not challenge the order.

At the start of trial on financial issues, on April 6, 2016, Manning renewed a request for attorney fees. The trial court denied it. The court noted that Manning was still receiving around \$5,200 a month in spousal and child support and that "[o]nce spousal support has been ordered and is being paid it equalizes the parties[]" incomes to enough of a degree that there is no need for attorney[] fees after that point." Trial proceeded and was submitted to the court on June 1 after six days of trial.

The trial court entered final judgment on September 16, 2016. In a detailed order spanning 23 pages, the court ordered that Manning and Kim share joint legal custody of their children and that Kim be awarded sole physical custody, with reasonable visitation to Manning. The court provided detailed guidance and procedures for visitation and communications between the parties. As for financial issues, the trial court modified child and spousal support to Manning, retroactive to temporary orders entered in May 2014. He was awarded monthly child and spousal support. The court made further orders and findings regarding property division.

Manning timely appealed. Kim filed a cross-appeal that was dismissed after she filed a request for dismissal. Manning at first proceeded without an attorney as he had in the trial court, but he retained counsel after the trial court granted his motion for Kim to pay his appellate attorney fees.

## II. DISCUSSION

### *A. Manning Forfeited His Right to Challenge the Denial of Attorney Fees Under Section 2030.*

Manning argues at length that he was severely prejudiced by the trial court's denial of his request for attorney fees under section 2030. Section 2030 provides that to ensure that each party has access to legal representation, the court may order one party to a dissolution action to pay the attorney fees of the other party. (§ 2030, subd. (a).) At oral argument, Manning's counsel argued that the court awarded sole physical custody to Kim because of Manning's inability to pay for an attorney. To support the argument, he pointed to a statement in the court's judgment that Manning was "often acting as an advocate more than a father, and is over-zealous at times. It is frustrating for [Kim] and her counsel as well as the Court at times." According to Manning's counsel, this statement proves that the court's custody rulings would have been more favorable to Manning if he had not been self-represented. We are not persuaded. The statement, read in context, simply describes Manning's overall behavior toward his children and the court. It falls far short of demonstrating an error in awarding physical custody in Kim, especially since the judgment elsewhere makes clear that Manning did not at the time have a permanent address in California.

In any event, we lack jurisdiction to review Manning's complaints about the denial of his requests for fees. "It is clear that the denial of a request for pendente lite attorney fees [in dissolution actions] is appealable." (*In re Marriage of Tharp* (2010) 188 Cal.App.4th 1295, 1311; see also *In re Marriage of Skelley* (1976) 18 Cal.3d 365, 368 [when a court renders interlocutory order collateral to main issue and dispositive of rights of parties, direct appeal may be taken].) "California follows a 'one shot' rule under

which, if an order is appealable, appeal must be taken or the right to appellate review is forfeited.” (*In re Baycol Cases I & II* (2011) 51 Cal.4th 751, 761, fn. 8; see also Code Civ. Proc., § 906 [court not authorized to review decision or order from which an appeal might have, but was not, taken].)

Manning requested attorney fees several times during the proceedings below, and the most recent denial came in April 2016, about five months before the entry of the order from which Manning did appeal. Those denials had long become final, and Manning forfeited his challenge to them by not timely appealing from them. (*In re Marriage of Weiss* (1996) 42 Cal.App.4th 106, 119 [party forfeited challenge to order on pendente lite attorney fees by not timely appealing from it].)

*B. Manning Also Forfeited His Right to Challenge the Striking of His Statement of Disqualification.*

Manning next argues at length that Judge Greenberg erred in not timely disclosing contributions from a law firm representing Kim and in not recusing herself once Manning brought the disclosure issue to her attention. This issue was also not preserved for our review because Manning failed to follow the proper procedure to challenge the trial court’s ruling. “The determination of the question of the disqualification of a judge is not an appealable order and may be reviewed only by a writ of mandate from the appropriate court of appeal sought only by the parties to the proceeding. The petition for the writ shall be filed and served within 10 days after service of written notice of entry of the court’s order determining the question of disqualification.” (Code Civ. Proc., § 170.3, subd. (d).) Under this provision, Manning forfeited his right to review by this court by not challenging the striking of his statement of disqualification by seeking writ review within 10 days of the judge’s April 5, 2016 order.

*C. Manning Has Not Established that the Custody Evaluator Was Biased.*

Manning next contends that the trial court erred in relying on the custody evaluator’s “incomplete” and “biased” report, but we disagree.

Evidence Code section 730 authorizes a court to appoint a disinterested custody evaluator to provide the court with an impartial custody report stating the evaluator’s

reasons after reviewing possible custody arrangements. (*In re Marriage of Adams & Jack A.* (2012) 209 Cal.App.4th 1543, 1562.) “ ‘The job of third parties such as . . . evaluators involves impartiality and neutrality, as does that of a judge, commissioner or referee.’ ” (*Ibid.*) California Rules of Court, rule 5.220, sets forth detailed procedures for the appointment of child-custody evaluators, and rule 5.225 lists the requirements for evaluators.

The evaluator noted in her report the challenges she faced because Manning failed to follow the court’s direction to cooperate with her, failed to timely complete required tasks, and “did not make scheduling appointments a priority.” Her final evaluation was based on interviews with Kim spanning five hours and a single interview with Manning spanning two hours. In its order awarding the parties joint legal custody of their children, with sole physical custody to Kim and reasonable visitation to Manning, the court acknowledged its own difficulties working with Manning and noted that Manning’s behavior could sometimes be frustrating. The court nonetheless found, based on the evidence presented, that Manning loves his children and his children love him, and it would not be in the children’s best interest to significantly modify the children’s visitation schedule with Manning.

Although the standard of review in assessing a trial court’s denial of a motion to remove a child custody evaluator is unclear, we cannot conclude that the court erred in declining to strike the evaluator’s report under any potentially applicable standard. In *In re Marriage of Adams & Jack A.*, *supra*, 209 Cal.App.4th 1543, the court considered whether the trial court properly denied a party’s motion to remove a custody evaluator based on alleged bias. (*Id.* at p. 1563.) The court determined that the question of whether the evaluator was biased against a party was a question of law to be reviewed de novo because the facts were undisputed. (*Id.* at pp. 1563-1564.) Here, by contrast, the facts are not undisputed. On appeal, Manning focuses on various aspects of the custody report and takes issue with the way the evaluator characterized his participation (or lack thereof) in the evaluation process. But the trial court found that Manning was, in fact, difficult to deal with. Not only are the facts here disputed, but Manning also fails to

connect any alleged bias by the evaluator to any adverse ruling against him. He does not specify how the court should have ruled differently on custody issues, let alone how the evaluator's supposedly biased report led to an erroneous result. Nor does he specify any requirement in the California Rules of Court that the evaluator or the trial court violated.

The cases upon which Manning relies are distinguishable. Again, in *In re Marriage of Adams & Jack A.*, the facts underlying the motion to remove a custody evaluator were undisputed, and the trial court also made a finding that the evaluator had “lost his objectivity.” (209 Cal.App.4th at pp. 1563-1564.) The court concluded that even under the most deferential standard of review, the trial court abused its discretion in denying the motion to remove the evaluator for bias given its factual finding of actual bias. (*Id.* at p. 1564.) By contrast, the trial court here agreed with the evaluator's assessment of Manning's behavior. And in *Leslie O. v. Superior Court* (2014) 231 Cal.App.4th 1191, the evaluator showed several signs of actual bias and went so far as to “step[] outside her role as evaluator to advocate against [one parent] and to help [the other parent].” (*Id.* at p. 1205.) There is no such showing that any such advocacy occurred here. Under the totality of the circumstances, we cannot conclude that the court erred in declining to strike the evaluator's report.

*D. Manning's Arguments Related to Kim's Financial Condition Were Forfeited or Lack Merit.*

We next reject each of Manning's brief arguments about Kim's finances. Manning first notes that Kim's income and expense declaration filed on November 20, 2014, showed she had \$93,642 in stocks, bonds, and other assets, and a declaration filed around a year later, on September 22, 2015, showed \$104,618 in stocks and bonds. Then on March 15, 2016, Kim reported \$0 in stocks, bonds, and other assets. Manning contends that “[t]his dissipation of assets while a divorce was being litigated, without notice to Mr. Manning or court approval, appears to be highly inappropriate.” As Manning himself acknowledges, however, the issue “was never even mentioned” below. He says the fact the issue was not raised below was another reason he would have benefited from having counsel, and he argues the money “should have been accounted for



in the judgment.” Having failed to raise the issue in the trial court, Manning forfeited the issue for appellate review.

Manning next challenges the temporary spousal order entered in July 2014. The temporary spousal support order was appealable, but Manning did not seek appellate review. (*In re Marriage of Skelley*, *supra*, 18 Cal.3d at pp. 369-370; *In re Marriage of Winter* (1992) 7 Cal.App.4th 1926, 1932.) He therefore forfeited his right to challenge it. (*In re Marriage of Weiss*, *supra*, 42 Cal.App.4th at p. 119.)

Finally, Manning argues that the final judgment must be reversed because the support provisions “did not account for Dr. Kim’s rental income.” (Unnecessary capitalization and bold omitted.) This one-page argument fails to include factual detail. Kim testified that persons named Maria and Steven Kang own two properties, that Kim lived at one of those properties, and that she rented out a cottage on the property. She first rented it to a couple who paid \$3,200 per month, and she later rented it to someone else for \$3,300. In March 15, 2016, Kim listed \$3,200 as an amount of expenses paid by others. The trial court concluded that Manning did not have an interest in any rents Kim received because they post-dated the couple’s separation. Manning does not challenge that finding, but he argues that the court should have factored in the monthly rental income Kim received when calculating support payments. He contends that Kim listed her rental income on her income and expense declaration as expenses paid by others, which was part of her and her attorneys’ “consistent pattern of concealing wealth to avoid paying Mr. Manning a fair amount in spousal support.”

The record and briefing are far too undeveloped for us to accept the contention. The record does not reveal the nature of the \$3,200 Kim listed as an expense, much less that it was actually a reference to rental income. And Manning’s briefing provided no analysis on how the amount affected the court’s calculation or how a proper calculation would affect the amount of his support. At oral argument, Manning’s counsel referenced the DissoMaster calculation attached to the judgment, but this reference fails to satisfy Manning’s appellate burden. Without providing further context—such as explaining the nature of the expense with citations to the record, describing whether the issue was

litigated below, and analyzing how the inclusion of any income would alter support payments—Manning fails to demonstrate error. (*City of Lincoln v. Barringer* (2002) 102 Cal.App.4th 1211, 1239 & fn. 16 [where issue not adequately supported by citations to record, court may decide appellant has waived issue rather than scour record unguided].)

III.  
DISPOSITION

The judgment is affirmed. Kim shall recover her costs on appeal.

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Humes, P.J.

WE CONCUR:

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Margulies, J.

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Banke, J.